

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2490

Introduced by Assembly Member Jones

February 19, 2010

An act to ~~amend Section 11751.5 of~~ *add Section 11658.5 to the Insurance Code, relating to workers' compensation insurance.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2490, as amended, Jones. Workers' compensation insurance: ~~rating organizations: statistical agent.~~ *dispute resolution: arbitration clauses.*

Existing law requires that a workers' compensation insurance policy or endorsement not be issued by an insurer unless the insurer files a copy of the form or endorsement with the rating organization and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would require any agreement between an employer and a workers' compensation insurer concerning resolution of disputes, including, but not limited to, an arbitration clause arising out of a workers' compensation policy, endorsement, or plan be part of the form or endorsement filed with the rating organization and approved by the commissioner and contain provisions to resolve disputes in the California courts and under California law. Failure to observe those requirements would render the dispute resolution agreement void and unenforceable.

Existing law authorizes the Insurance Commissioner, after notice and hearing, to promulgate reasonable rules and statistical plans, to be used in recording and reporting by workers' compensation insurers their loss and expense experience in order that the information may be made available to aid the commissioner in his or her duties regarding the approval of workers' compensation insurance rates.

Existing law requires the commissioner to designate a licensed rating organization, as defined, as his or her statistical agent to gather and compile workers' compensation insurers loss and expense experience statistics, and all licensed rating organizations are required to report loss and expense experiences of their member workers' compensation insurers to the statistical agent. Subject to reasonable rules approved by the commissioner, the statistical agent is required to make available those compiled experience statistics to all licensed rating organizations. The statistical agent is authorized to make a reasonable charge to other rating organizations for the expense incurred by it in combining, tabulating, and compiling the experience of all workers' compensation insurers.

This bill would require that the statistical agent make available those compiled experience statistics to all other organizations that the commissioner, by regulation, identifies as appropriate, and would authorize the statistical agent to make a reasonable charge for the information.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) All California employers subject to the Workers'
- 4 Compensation Law are required by law to obtain insurance for
- 5 their employees.
- 6 (b) Workers' compensation plans are highly regulated and
- 7 designed primarily to protect the worker and ensure prompt
- 8 payment of claims.
- 9 (c) The Legislature has authorized the Insurance Commissioner
- 10 (commissioner) and the Workers' Compensation Insurance Rating
- 11 Bureau (WCIRB) to oversee the form and substance of all workers'
- 12 compensation insurance plans, including everything from the scope

1 of required coverage provided to employees, to the amount
2 employers pay insurers for premiums.

3 (d) Insurance companies providing workers' compensation
4 policies are required by law to disclose and seek preapproval from
5 the commissioner and WCIRB of the insurance plan being
6 purchased.

7 (e) Disputes between employers and insurance companies
8 regarding workers' compensation plans can arise, and resolution
9 of these disputes through litigation can be expensive, uncertain,
10 and time consuming.

11 (f) In an effort to save time, costs, and the uncertainty of
12 litigation, national workers' compensation carriers often place
13 mandatory arbitration clauses into policies and, over time, these
14 arbitration clauses have become complex and expensive, and have
15 diminished the rights of the parties in the arbitration proceedings.

16 (g) Despite the requirement that the commissioner approve the
17 form and substance of all workers' compensation plans, some
18 workers' compensation carriers issue separate or side agreements,
19 sometimes called Insurance Program Agreements or IPAs, that
20 are not provided to the employer until after the policy or plan is
21 accepted, that require arbitration of any disputes between the
22 employer and the carrier concerning the approved workers'
23 compensation plan, and lack the approval of the commissioner.

24 (h) These unapproved separate or side agreements (or IPAs)
25 often choose a foreign jurisdiction's law to interpret the plan and
26 resolve disputes, and choose a state other than California as the
27 location or venue to conduct arbitrations. This subjects
28 Californians to another state's laws and forces them to travel
29 outside this state to conduct dispute resolution proceedings,
30 resulting in significant cost burdens.

31 (i) California employers have successfully challenged some of
32 these side agreements containing arbitration clauses; however, it
33 should not be necessary to burden the California courts with these
34 cases.

35 (j) California has a compelling state interest in ensuring that
36 workers' compensation policies and plans are enforced under
37 California law and not subject to interpretation by other
38 jurisdictions, and that any dispute resolution proceedings are
39 conducted within its borders.

1 SEC. 2. *Section 11658.5 is added to the Insurance Code, to*
2 *read:*

3 11658.5. (a) *Any agreement between an employer and a*
4 *workers' compensation insurer concerning resolution of disputes,*
5 *including, but not limited to, an arbitration clause arising out of*
6 *a workers' compensation policy, endorsement, or plan shall*
7 *conform to all of the following:*

8 (1) *It shall be part of the form or endorsement filed with the*
9 *rating organization and approved by the commissioner pursuant*
10 *to Section 11658.*

11 (2) *It shall contain a choice of law provision that identifies*
12 *California law as the law to be used to resolve any dispute.*

13 (3) *It shall contain a forum selection provision that identifies*
14 *California as the proper venue for any proceeding regarding a*
15 *dispute.*

16 (b) *Failure to observe the requirements of this section shall*
17 *render the dispute resolution agreement void and unenforceable.*

18 ~~SECTION 1. Section 11751.5 of the Insurance Code is~~
19 ~~amended to read:~~

20 ~~11751.5. The commissioner, after notice and hearing, may~~
21 ~~promulgate reasonable rules and statistical plans, which may be~~
22 ~~modified from time to time and which shall be used thereafter in~~
23 ~~the recording and reporting by insurers of their loss and expense~~
24 ~~experience in order that the experiences of all insurers may be~~
25 ~~made available in such form and detail as may be necessary to aid~~
26 ~~the commissioner in administering the provisions of Article 2~~
27 ~~(commencing with Section 11730). The commissioner shall~~
28 ~~designate a rating organization licensed under this article as his or~~
29 ~~her statistical agent to gather and compile such experience statistics~~
30 ~~and all licensed rating organizations shall report the experience of~~
31 ~~their members to such designated rating organization. Subject to~~
32 ~~reasonable rules approved by the commissioner, such designated~~
33 ~~rating organization shall make such experience statistics, when~~
34 ~~compiled, available to all licensed rating organizations, and other~~
35 ~~organizations that the commissioner, by regulation, identifies as~~
36 ~~appropriate to obtain the statistics, and may make a reasonable~~
37 ~~charge to other rating organizations and other organizations for~~

- 1 ~~the expense incurred by it in combining, tabulating, and compiling~~
- 2 ~~the experience of all workers' compensation insurers.~~

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